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WC 08-189

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BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION
FINANCE ADVISE
FORM 159Approved by OMB
3060-0589
Page No. 1 of 2

DOCKET FILE COPY ORIGINAL

(1) LOCKBOX # 979091		SPECIAL USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Harris, Wiltshire & Grannis LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$965.00	
(4) STREET ADDRESS LINE NO. 1 1200 18th Street NW			
(5) STREET ADDRESS LINE NO. 2 Suite 1200			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20036
(9) DAYTIME TELEPHONE NUMBER (include area code) (202) 730 1337		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004362307		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Broadwing Communications, LLC			
(14) STREET ADDRESS LINE NO. 1 1025 Eldorado Blvd.			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Broomfield		(17) STATE CO	(18) ZIP CODE 80021
(19) DAYTIME TELEPHONE NUMBER (include area code) (720) 888 7043		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0008599706		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$965.00	(27A) TOTAL FEE \$965.00	(28A) FCC CODE 1	
(28A) FCC CODE 2		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	(28B) FCC CODE 1	
(28B) FCC CODE 2		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Kent D. Bressie</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>Kent D. Bressie</u>		DATE <u>29 August 2008</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

JULY 2005

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE (CONTINUATION SHEET)
FORM 159-C

Page No **2** of **2**

SPECIAL USE ONLY
FCC USE ONLY

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT
SECTION BB - ADDITIONAL APPLICANT INFORMATION

(13) APPLICANT NAME

Telecom Management, Inc. D/B/A Pioneer Telephone

(14) STREET ADDRESS LINE NO. 1

583 Warren Avenue

(15) STREET ADDRESS LINE NO. 2

(16) CITY

Portland

(17) STATE

ME

(18) ZIP CODE

33815

(19) DAYTIME TELEPHONE NUMBER (include area code)

(207) 774 9500

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN)

0005859111

(22) FCC USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

(23C) CALL SIGN/OTHER ID

(24C) PAYMENT TYPE CODE

(25C) QUANTITY

(26C) FEE DUE FOR (PTC)

(27C) TOTAL FEE

FCC USE ONLY

(28C) FCC CODE 1

(29C) FCC CODE 2

(23D) CALL SIGN/OTHER ID

(24D) PAYMENT TYPE CODE

(25D) QUANTITY

(26D) FEE DUE FOR (PTC)

(27D) TOTAL FEE

FCC USE ONLY

(28D) FCC CODE 1

(29D) FCC CODE 2

(23E) CALL SIGN/OTHER ID

(24E) PAYMENT TYPE CODE

(25E) QUANTITY

(26E) FEE DUE FOR (PTC)

(27E) TOTAL FEE

FCC USE ONLY

(28E) FCC CODE 1

(29E) FCC CODE 2

(23F) CALL SIGN/OTHER ID

(24F) PAYMENT TYPE CODE

(25F) QUANTITY

(26F) FEE DUE FOR (PTC)

(27F) TOTAL FEE

FCC USE ONLY

(28F) FCC CODE 1

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US BANK/FCC SEP 03 2000

STAMP AND RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matters of

Broadwing Communications, LLC,
Transferor,

Telecom Management, Inc.,
d/b/a Pioneer Telephone,
Transferee,

Consolidated Application to Transfer Control of
Residential and Small-and-Medium-Enterprise
Customer Base for Domestic and International
Telecommunications Services Pursuant to
Section 214 of the Communications Act of
1934, as Amended

File No. ITC-T/C-200809__-__

WC Docket No. 08-__

Attention: International and Wireline Competition Bureaus

**CONSOLIDATED APPLICATION FOR CONSENT TO
TRANSFER OF CONTROL OF COMMON-CARRIER ASSETS—
STREAMLINED PROCESSING REQUESTED**

Pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 63.04 and 63.24 of the Commission's rules, Broadwing Communications, LLC ("Broadwing") (FRN No. 0008599706), and Telecom Management, Inc. d/b/a Pioneer Telephone ("Pioneer") (FRN No. 0005859111) (together, "Applicants") seek Commission consent to transfer control to Pioneer of Broadwing's residential and small-and-medium-enterprise ("SME") customer bases, to which Broadwing presently provides domestic interexchange and international telecommunications services. Broadwing and its affiliates have entered into agreements with Pioneer for an asset-based transaction whereby Pioneer will acquire Broadwing's residential and SME customer bases ("Proposed Transaction"), but no network facilities. Neither Broadwing

nor its indirect parent company, Level 3 Communications, LLC ("Level 3"), will assign any international Section 214 authorization in connection with the Proposed Transaction, and Broadwing will continue (as a wholly-owned subsidiary of Level 3) to provide domestic and international telecommunications services to other corporate customers. This consolidated application qualifies for presumptive streamlined processing under Sections 63.03(b)(2)(i) and 63.12 of the Commission's rules, and the Applicants therefore request such treatment.¹

I. BACKGROUND

A. Parties to the Proposed Transaction

Broadwing. Broadwing is a Delaware limited-liability company with its principal place of business in Broomfield, Colorado. Broadwing provides data, video, and voice (local, intrastate, and interstate) services on a nationwide basis to enterprises, carriers, government agencies, and some residential consumers. Broadwing is not regulated by the Commission as dominant for the provision of any service. Broadwing is an indirect, wholly-owned subsidiary of Level 3, which has previously notified the Commission that it provides international telecommunications services through Broadwing, as a wholly-owned subsidiary, pursuant to Section 63.21(h) of the Commission's rules. Following the sale of its residential and SME businesses—to which it provides only domestic interexchange and international telecommunications services—to Pioneer, Broadwing will retain its existing network facilities and provide telecommunications to other corporate customers.

Pioneer. Pioneer is a Maine corporation with its principal place of business in Portland, Maine. Pioneer primarily provides switched voice (intrastate, interstate and international)

¹ See 47 C.F.R. §§ 63.03(b)(2)(i), 63.12.

services on a nationwide basis to small- and medium-sized businesses and residential customers. Pioneer holds international Section 214 authority provide global resale services. Pioneer is not regulated by the Commission as dominant for the provision of any service. Pioneer has no other direct or indirect subsidiaries.

B. The Proposed Transaction

On July 9, 2008, Broadwing and Pioneer entered into two asset purchase agreements comprising the Proposed Transaction. In the first asset purchase agreement, Pioneer agreed to purchase Broadwing's residential customer base, to which Broadwing presently provides only domestic interexchange and international telecommunications services.² In the second, Pioneer agreed to purchase Broadwing's SME customer base, to which Broadwing presently provides only domestic interexchange and international telecommunications services. The parties anticipate consummating the Proposed Transaction in the fourth quarter of 2008, subject to regulatory approval by the Commission and the state public utility commissions ("PUCs"), the majority of which have already granted consent.

Pioneer's acquisition of Broadwing's residential and SME customer bases will create operating efficiencies which will serve to enhance the overall capacity of Pioneer to compete in the marketplace and to provide telecommunications services for a greater number of consumers

² On July 9, 2008, the Applicants also entered into a management agreement whereby Pioneer will provide to Broadwing on an interim basis certain management and related services in order to ensure continuity of services for Broadwing's existing residential customers pending consummation of the Proposed Transaction. This agreement does not apply to Broadwing's SME customer base.

at competitive rates. The affected Broadwing customers will benefit from the improved back-office and customer services resources that have been deployed by Pioneer, which will help ensure continuity of service and enhance the ability of Pioneer to offer a broader range of innovative products and services to customers. Grant of this Application will promote competition in the interstate and international long-distance telecommunications markets and will serve the public interest, convenience, and necessity.

II. MARKET ANALYSIS

A. Local Exchange and Exchange Access Services

The Proposed Transaction will have no impact on any participant's share of the local-exchange and exchange access market segments. For the residential and SME customer bases which Broadwing intends to sell to Pioneer, Broadwing provides only domestic interexchange and international telecommunications services. Moreover, Pioneer itself presently provides no local exchange or exchange access services. Consequently, Pioneer's acquisition of those Broadwing customer bases will not increase Pioneer's participation in any local exchange or exchange access market segment.

B. Interstate Interexchange Services

The Proposed Transaction will have a negligible impact on any participant's share of the interstate interexchange market segment, as Broadwing's residential and SME customer bases and Pioneer's existing operations represent insignificant participation in the market for interstate interexchange services. In 2004—the most recent year for which FCC toll revenue data are publicly available—Broadwing's total toll revenues (only a portion of which were interstate interexchange revenues, much less interstate interexchange revenues from residential and SME

customers) totaling approximately \$658 million.³ For that same year, Pioneer's toll revenues (only a portion of which are interstate interexchange revenues) were roughly \$3.14 million.⁴ By comparison, total industry-wide toll revenues for all carriers in 2004 exceeded \$71.2 billion, and total revenues for all non-LEC, non-wireless toll service providers exceeded \$58.5 billion.⁵ Thus, even assuming that all toll revenues generated by Broadwing and Pioneer were interstate interexchange revenues (and they are not), the combined interexchange revenues would amount to less than two percent of total industry-wide toll revenues, and less than one percent if all non-LEC, non-wireless toll services are included. Neither Broadwing nor Pioneer nor any affiliate of Broadwing or Pioneer is regulated as dominant for the provision of any service.

II. INFORMATION REQUIRED BY SECTIONS 63.18 AND 63.24 OF THE COMMISSION'S RULES

Pursuant to Section 63.18 of the Commission's rules, the Applicants provide the following information in support of their request for consent to transfer control to Pioneer of Broadwing's residential and SME customer bases, as Broadwing presently offers international telecommunications services to those customers :

- (a) The name, address and contact number of the transferor is:

BROADWING COMMUNICATIONS, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
+1 720 888 7043 tel

³ See TRENDS IN TELEPHONY SERVICE, at 9-5, Tbl. 9.1 (Feb. 2007).

⁴ See Telecom Management, Inc. d/b/a Pioneer Telephone's 2004 Internal Revenue Service Form 1120.

⁵ See TRENDS IN TELEPHONY SERVICE, at 9-5, Tbl. 9.1 (Feb. 2007).

The name, address and contact number of the transferee is:

TELECOM MANAGEMENT, INC. D/B/A PIONEER TELEPHONE
583 Warren Avenue
Portland, Maine 33815
Telephone: (207) 774-9500

- (b) Broadwing is a Delaware limited-liability company. Pioneer is a Maine corporation.
- (c) Correspondence concerning this Application should be addressed to:

Leon Nowalsky, Esq.
NOWALSKY, BRONSTON & GOTHARD
3500 N. Causeway Blvd., Suite 1442
Metairie, LA 70002
Phone: (504) 832-1984
Fax: (504) 831-0892
Email: lnowalsky@nbglaw.com

and

Rogelio Peña, Corporate Counsel
LEVEL 3 COMMUNICATIONS, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
+1 720 888 7043 tel
+1 720 888 5314 fax
rogelio.pena@level3.com

with a copy to

Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2516
+1 202 730 1337 tel
+1 202 730 1301 fax
kbressie@harriswiltshire.com
Counsel for Broadwing Communications, LLC

- d) Pursuant to Section 63.21(h) of the Commission's rules, Broadwing provides international telecommunications services in reliance on the international Section 214 authorization for global facilities-based and global resale services of its indirect parent company, Level 3.⁶ Following the consummation of the Proposed

⁶ See *International Authorizations Granted, Public Notice*, DA 08-1857 (Int'l Bur., rel. Aug.

Transaction, Level 3 will retain its international Section 214 authorization and Broadwing will continue to provide international telecommunications services to other corporate customers in reliance on that authorization.

Pioneer holds international Section 214 authority for the provision of global resale services pursuant to FCC File Number ITC-214-19970124-00040 (old File No. ITC-97-050).⁷

(e)-(g) Responses not required for this Application.

(h) The following are the names, addresses, citizenship, and principal businesses of any person or entity that will directly or indirectly own at least ten percent of the equity of Pioneer, as the transferee.

Susan Bouchard

Address: 583 Warren Avenue, Portland, ME 04103

Citizenship: United States

Principal Business: Telecommunications

Percent Ownership: 100%

No other person or entity holds a 10-percent-or-greater interest in Pioneer. Pioneer has no interlocking directorates with any foreign carrier.

(i) By its signature below, Pioneer certifies that it is not affiliated with any foreign carrier.

(j) By its signature below, Pioneer certifies that following the consummation of the Proposed Transaction, (1) Pioneer will not be a foreign carrier in any destination country to which it seeks to provide international telecommunications services; (2) Pioneer will not control a foreign carrier in any destination country to which it seeks to provide international telecommunications services; (3) no entity controlling a foreign carrier in any destination country to which Pioneer seeks to

7, 2008) (noting Level 3's notification of provision of international telecommunications services authorized pursuant to FCC File No. ITC-214-19971229-00821 through six indirect, wholly-owned subsidiaries, including Broadwing). Prior to that date, Broadwing provided international telecommunications services in reliance on its own international Section authorization for global facilities-based and global resale authority, but Broadwing surrendered that authority in connection with the Section 63.21(h) notification filed by Level 3. *See id.*

⁷ See *Overseas Common Carrier Section 214 Applications Actions Taken, Public Notice*, 13 FCC Rcd. 2783 (Int'l Bur. 1997) (granting authority to PRB, Inc. d/b/a Pioneer Telephone); *International Authorizations Granted, Public Notice*, 20 FCC Rcd. 17,169 (Int'l Bur. 2005) (noting authorization holder's change of name, from PRB, Inc., to Telecom Management, Inc. d/b/a Pioneer Telephone).

provide international telecommunications services will own more than twenty-five percent (25%) of Pioneer, or control Pioneer; and (4) no foreign carriers (or parties that control foreign carriers) in any destination country to which Pioneer seeks to provide international telecommunications services will own, in the aggregate, more than twenty-five percent (25%) of Pioneer or are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.

- (k) As Pioneer has not made any affirmative certifications regarding foreign carrier affiliations, in response to Section 63.18(j) of the Commission's rules, Pioneer need not make a showing regarding WTO status, under Section 63.18(k) of the Commission's rules.
- (l) As Pioneer has not made any affirmative certifications regarding WTO status, in response to Section 63.18(k) of the Commission's rules, Pioneer need not make a showing regarding the resale of international switched services of an unaffiliated carrier, under Section 63.18(l) of the Commission's rules.
- (m) As Pioneer has not made any affirmative certifications regarding resale of international switched services, in response to Section 63.18(l) of the Commission's rules, Rally Capital need not make a showing regarding non-dominant status, under Section 63.18(m) of the Commission's rules.
- (n) By its signature below, Pioneer certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) By its signature below, Pioneer certifies that no party to the Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.
- (p) Pursuant to Section 63.12 of the Commission's rules, the Applicants seek streamlined processing of this application for consent to transfer control of Broadwing's residential and SME customers as neither Broadwing nor Pioneer is regulated as dominant with respect to provision of service on international route and because Pioneer neither has any affiliation with a foreign carrier nor will acquire any such affiliation as a consequence of the Proposed Transaction.

IV. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION'S RULES

The Applicants submit the following information, pursuant to Section 63.04 of the Commission's rules, in support of the Applicants' request for consent to transfer control of Broadwing's residential and SME customer bases, as Broadwing presently provides domestic interstate telecommunications services to those customers:

- (a)(1) See response to part II(a) above for the names, addresses, and telephone numbers of the Applicants.
- (a)(2) See response to part II(b) above for the state laws under which the Applicants are organized.
- (a)(3) See response to part II(c) above for the contact information to whom correspondence concerning this application is to be addressed.
- (a)(4) See response to part II(h) above for a list of persons or entities that directly or indirectly own at least 10 percent of the equity of Pioneer, and the percentage of equity owned by each of those persons or entities.
- (a)(5) By its signature below, Pioneer certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.
- (a)(6) The Applicants set forth a complete description of the Proposed Transaction in part I.B above.
- (a)(7) Broadwing offers interexchange telecommunications services to customers in all 50 states. Pioneer offers interexchange telecommunications services in every state with the exceptions of Alaska and Hawaii. To the extent Broadwing and Pioneer each offer domestic interstate common carrier services, they do so pursuant to the blanket domestic Section 214 authorization in Section 63.01 of the Commission's rules.
- (a)(8) This Application qualifies for presumptive streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules because the Proposed Transaction will not create any acquisition-specific effects in any local exchange, exchange access, or interexchange or market segment. As noted in part II.B above, following consummation of the Proposed Transaction, Pioneer will continue to have a market share in the interstate, interexchange market of less

than ten percent.⁸ Pioneer currently provides no local exchange or exchange access services in the areas served by Broadwing's residential and SME businesses, and the geographic areas in which Pioneer and Broadwing's residential and SME businesses each provide such services are served by a dominant local exchange carrier that is not a party to the Proposed Transaction.⁹ Neither Broadwing nor Pioneer nor any affiliate of Broadwing or Pioneer is dominant with respect to any service.¹⁰

- (a)(9) The Applicants have not filed any other applications with the Commission in connection with the Proposed Transaction. Pursuant to Section 64.1120(e) of the Commission's rules, the Applicants have filed a slamming certification letter.¹¹ The Applicants have sought regulatory approval from the state PUCs (as Broadwing's residential and SME businesses provide intrastate interexchange services), and the majority of those PUCs have already granted consent.
- (a)(10) The Applicants request expedited consideration of this application to allow for consummation of the Proposed Transaction in the fourth quarter of 2008.
- (a)(11) The Applicants have not filed any waiver requests in connection with the Proposed Transaction.
- (a)(12) As discussed above, grant of this Application will strengthen Pioneer as the post-transaction company will become a stronger competitor in the marketplace for interstate and international telecommunications services. By creating greater economies of scale, the Proposed Transaction will permit Pioneer to offer a broader range of innovative products and services to customers. As noted in part II above, the Proposed Transaction will have a negligible impact on any participant's share of the local exchange, exchange access, or interstate interexchange market segments. Consequently, the Applicants believe that Commission grant of this Application will promote competition in the interexchange and international telecommunications markets and will serve the public interest.

⁸ See 47 C.F.R. § 63.03(b)(2).

⁹ See *id.*

¹⁰ See *id.*, § 63.03(b)(2)(i).

¹¹ See Letter to FCC Secretary Marlene H. Dortch from Pioneer counsel Leon Nowalsky and Broadwing counsel Rogelio Peña, CC Docket No. 00-257 (filed Aug. 18, 2008).

CONCLUSION

For the foregoing reasons, the Applicants respectfully request that the Commission consent to the transfer of control of Broadwing's residential and SME customer bases to Pioneer pursuant to the Commission's streamlined processing procedures.

Respectfully submitted,

BROADWING COMMUNICATIONS, LLC

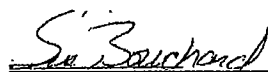


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29 August 2008